

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

OWEN W. BARNABY,
Plaintiff- Appellant

Vs.

MICHIGAN STATE GOVERNMENT, ET, AL
Defendants- Appellees

)

)

) Hon. Robert J. Jonker

) Hon. Mag. Sally J. Berens

) Case No. 1:22 -CV- 1146

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EXPEDITED CONSIDERATION REQUESTED
For,

Supplemental Brief for Submitted New Discoveries, Defendants' Opposition to Plaintiff's,

**Amended Appeal from the Magistrate Judge's Orders (ECF No. 91, In Part,
And (ECF No. 96) In Full, to the District Court's Judge.**

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Certificate of Service

Certificate of Compliance

Supplement Designation of Relevant District Court Documents

Did the Hon. Magistrate Judge Berens' Order Following Remand (ECF No. 91), Denying Plaintiff Entering Defaults (ECF Nos. 32, 75, 95) and Entering Default Judgments (ECF Nos. 28, 31, 77, 81, 88), is an abuse of discretion and a violation of Sixth Circuit Court's Order and Judgment (ECF Nos. 72, 73), that Ordered the District Court's, ".... For further proceedings consistent with this Order"? Plaintiff Answers Yes! 4-12

- A. Is Plaintiff Warrants the Entering of Defaults and Default Judgments Against Defendants Pursuant to FRCP 55: (a), (b) (1), (2)?Plaintiff Answers Yes!
- B. The Berrien County Defendants were Properly Served Summonses with copies of Complaints (ECF Nos, 10, 36), and failed to file answers or Rule 12 motions, Clearly, Plaintiff Warrants Defaults and Default Judgments Against Them.
- C. The Niles Charter Township Defendants were Properly Served Summonses with copies of Complaints (ECF Nos, 10, 36), and failed to file an answer or a rule 12 motion or objection to Plaintiff 's Third, Amended Complaint (ECF No. 36) and did not appeal District Court's Order and Final Judgment (ECF Nos 67, 68), Warrants Plaintiff's Default and Default Judgment Against Them. (ECF Nos.28, 32,75, 77, 95).
- D. The Question Plaintiff Seeks to be answer, is should an Officer of this District Court and His Professional Practice Entity, Attorney Jeffery R. Holmstrom and Holmstrom Law Office PLC, Defendants get away with their willfully rejections service by certified restricted mailing of Summonses and copies of Complaint (ECF No, 10), or if they received the same and pretended as if they did not get them?
- E. The State of Michigan Defendants were Properly Served Summonses with copies of Complaints (ECF Nos, 10, 36), failed to file an answer or a valid Motion under Rule 12, or an Appeal, Warrant Plaintiff's Default and Default Judgment Against Them.
- F. The Benton Harbor Defendant was Properly Served Summons with copies of Complaints (ECF Nos, 10, 36), and failed to file an answer or a Motion under Rule 12, or an Appeal, Warrant Plaintiff's Default and Default Judgment Against Them.

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Statement of Oral Argument

The District Court could reverse the Magistrate Judge's Orders (ECF No. 91, In Part, And (ECF No. 96) In Full, without Oral Arguments.

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I. Statement of Jurisdiction

District Court's Jurisdiction pursuant to 28 U.S.C. § 636(b)(1)(A) to hear this Appeal.

II. Sixth Circuit Court's Order (ECF No72) and the Relevant Facts

Plaintiff properly served Defendants under State and Federal Rules and District Court's Local Rules, Service Handbook¹, that states as follows: “**2. By Mail** The summons and complaint can be served by sending them by certified mail with restricted delivery and return receipt. A “green card” (PS Form 3811) will be mailed to the plaintiff, to show proof of service. The “green card” or a copy, must be filed with the Court.” (ECF No. 29, PagesID.104-112). And, none of the Defendants **had directly opposed or objected to** Plaintiff's filed, PROOF OF SERVICE OF SUMMONS AND COMPLAINT, on January 03, 2023. See, (ECF No. 29, PagesID.104-112).

First, the Postal Service delivered the Certified mail, Niles Township and State of Michigan Defendants were not present. Second Postal Service left notice of the “...certified mail with restricted delivery...”, for the Niles Township and the State of Michigan Governors Defendants. Thirdly, Holmstrom Defendants were present, but willfully rejected Certified mail.

Moreover, while both the Niles Charter Township Defendants (ECF No. 29-1, PageID.115) and the State of Michigan and Governors Defendants; went to the Postal Facilities and Pickup their summonses and copies of Second Amended Complaint and acknowledged such mailing with a signed and electric return receipts. **Exhibit W-12.** Again, Holmstrom Defendants abandoned mail, by willfully failing to go to the Postal Facility to Pick up their summonses, and copies of Second Amended Complaint. ECF No. 29, PagesID.111-112). (**Exhibits W-13, 14**).

¹ file:///C:/Users/Admin/Desktop/Circuit-Brief%20of%202022/2022%20Eastern%20Distict%20Court/Service Handbook.pdf

Lastly, Plaintiff new discovery, that, on December 21, 2021, Defendants Berrien County Board of Commissioners have Authorized by Appointment or by Law, Attorney Hackworth to receive service of process on behalf of the Berrien County Defendants. see, (Exhibit-W15).

Both, the new discoveries, and the settled facts in the record further proved that Plaintiff warrants, Clerk of Court under Rule 55 – (a), to Enter Default (ECF Nos, 32, 75, 95) against all Defendants, and under Rule 55 – (b)(1)(2), Clerk or by Order of the Court enter Default Judgment (ECF Nos, 28, 31, 77, 81, 88) against all Defendants².

III. STANDARD OF REVIEW

1. Service under District Court's Local Rules Service Handbook

“2. By Mail The summons and complaint can be served by sending them by certified mail with restricted delivery and return receipt. A “green card” (PS Form 3811) will be mailed to the plaintiff, to show proof of service. The “green card” or a copy, must be filed with the Court.” (ECF No. 29, PagesID.104-112).

2. Service under Federal Rules 4

Service on Agent under Federal Rules Under the federal rules, “an agent authorized by appointment or by law to receive service of process” may receive service on behalf of either (1) a corporation, Fed. R. Civ. P. 4(h)(1) (A)(B), or (2) an individual defendant, Fed. R. Civ. P. 4(e)(1)(2)(B)(C) and Fed. R. Civ. P. 4(j)(2)(A)(B).

² It is a matter of undeniable facts, all Defendants’ abandoning, failing or forfeiting filing answers or valid Rule 12 motion, or Rule 12 motions, to Plaintiff’s, Second and Third Amended Complaint (ECF Nos.10,36) within the 21 or 28 days’ required time span; both the ones who accepted and the ones who willfully rejected Plaintiff’s properly served Summonses and copies of Complaint (ECF Nos.10,36), because they relied on the District Court to defend them; **but, Plaintiff contends, thanks be to GOD!, for appellate review**, and that, now that their plan failed, his default and default judgment must be entered against all same Defendants as a matter of law, as the role of Courts is to be neutral, not to be Defendants’ legal representatives.

3. Service under Michigan State Rules, MCR 2.105

The two, Process and Manner of Service pursuant Mich. Ct. R. 2.105 (A) (1) (2), personal and by certified mailing.

(G) Public Corporations.

(1) the chairperson of the board of commissioners or the county clerk of a county.

(I) Agent Authorized by Appointment or by Law.

(1) Service of process on a defendant may be made by serving a summons and a copy of the complaint on an agent authorized by written appointment or by law to receive service of process.

(K) Jurisdiction; Range of Service; Effect of Improper Service.

(3) An action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within the time provided in these rules for service.

IV. SUMMARY of the ARGUMENT

The record shows that, Plaintiff properly served all Defendants under State Rules MCR 2.105: (A)(1)(2); (G)(1); (I)(1); (K)(3) and Federal Rules Fed. R. Civ. P. 4:(h)(1) (A)(B); (e)(1)(2)(B)(C); (j)(2)(A)(B) and pursuant to “District Court’s Local Rules Service Handbook”, ECF No. 49, PageID.311); (ECF No. 49-1, PageID.320): “2. By Mail The summons and complaint can be served by sending them by certified mail with restricted delivery and return receipt. A “green card” (PS Form 3811) will be mailed to the plaintiff, to show proof of service. The “green card” or a copy, must be filed with the Court.” (MIED Service Handbook (9/2020) Page | 3). And, none of the Defendants had opposed or objected to the Plaintiff’s filed, PROOF OF SERVICE OF SUMMONS AND COMPLAINT (ECF No. 29, PagesID.104-112).

The Order, (ECF No. 91) must be reversed in part, as District Court must be “consistent” with Sixth Circuit’s Order, by Ordering the Clerk to enter Default and enter Default Judgment per Rule 55:(a),(b)(1)or (2), in his affidavit, Twenty Two Million, Five Hundred Twenty Nine Thousand, Three Hundred and Twenty Nine Dollars and Sixty Cents, \$22, 529,329.60.

V. ARGUMENTS ON THE ISSUES

Plaintiff contends, given Sixth Circuit Court's ruling that, the District Court should not have disturbed Plaintiff's Second and Third Amended Complaint (ECF Nos. 10, 36). Defendants' time to file answer or valid rule 12 motion to Second Amended Complaint (ECF No. 10) was within the 21 days' time span after process service; and or within the 28 days' time span, from the Third Amended Complaint (ECF No. 36), ruling on February 13, 2023, to March 14, 2023, expiration. They should either appeal to the District Court's Orders and Final Judgment (ECF Nos. 35, 56, 62, 67, 68) or file a motion to safeguard their rights. Instead, they abandoned their rights, and now wants the District Court to be their legal representative and to further prejudice Plaintiff beyond their 14 years of pain and sufferings to Plaintiff and the death of his family.

Did the Hon. Magistrate Judge Berens' Order Following Remand (ECF No. 91), which Denied Plaintiff Entering Defaults (ECF Nos. 32, 75, 95) and Entering Default Judgments (ECF Nos. 28, 31, 77, 81, 88), an abuse of discretion and a violation of Sixth Circuit Court's Order and Judgment (ECF Nos. 72, 73), that Ordered the District Court's, "... For further proceedings consistent with this Order"? Plaintiff Answers Yes!

Moreover, State of Michigan Defendants' raised issues in, Sixth Circuit Appellate Court, is now bidding on this District Court, "Barnaby's appeal does not challenge the District Court's conclusion that the State Defendants are entitled to immunity and, as a result, that issue is waived and is dispositive." Furthermore, the State of Michigan Defendants went on to argued, that:

"As to the State Defendants, the District Court dismissed this matter as devoid of merit based upon their Eleventh Amendment immunity. (Order Approving and Adopting Report and Recommendation, R. 67, Page ID # 942.) **Barnaby's appeal does not challenge this finding. "An appellant abandons all issues not raised and argued in its initial brief on appeal."** United States v. Johnson, 440 F.3d 832, 845–46 (6th Cir. 2006) (citing United States v. Still, 102 F.3d 118, 122 n.7 (5th Cir. 1996).) "[I]t is a settled appellate rule that issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived." Id. (citing United States v. Elder, 90 F.3d 1110, 1118 (6th Cir. 1996).) "It is not sufficient for a party to mention a possible argument in the most skeletal way, **leaving the court to put flesh on its bones.**" Meridia Prod Liability Litigation v. Abbott Laboratories, 447 F.3d 861, 868 (6th Cir. 2006) (citing McPherson v. Kelsey, 125 F.3d 989, 995–96 (6th Cir. 1997))" (Case: 23-1134 Document: 23 Filed: 05/30/2023 Page: 21)"

The Sixth Circuit Appellate Court agreed with State of Michigan Defendants', argument, and concluded, that,

“Barnaby does not challenge the district court’s holding that several defendants the Michigan State Bar, the Michigan Supreme Court, the State of Michigan, Whitmer, and Nessel are immune from suit... **Barnaby therefore has forfeited appellate review of those rulings.** See *Agema v. City of Allegan*, 826 F.3d 326, 331 (6th Cir. 2016); *Geboy v. Brigano*, 489 F.3d 752, 767 (6th Cir. 2007).”

Plaintiff contends, the same legal analysis must be applied to all Defendants that failed to file answer or a valid Motion or acts on the Granted Motion, to Plaintiff’s Second and Third Amended Complaint (ECF Nos. 10, 36), within the time span, or failed to appeal Orders, Final Judgment (ECF Nos. 35, 56, 62, 67, 68). The Sixth Circuit’s Order(ECF No. 72), that are binding on the District Court, states: “....REMAND for further proceedings consistent with this Order.”

A. Does Plaintiff Warrant the Entering of Defaults and Default Judgments Against Defendants Pursuant to FRCP 55: (a), (b) (1), (2)?Plaintiff Answers Yes!

Because all Defendants were properly served or willfully rejected service, District Court must be “consistent” with the Sixth Circuit Court’s Order above (ECF No. 72), by having the Clerk of Court under Rule 55 – (a), to Enter Default (ECF Nos, 32, 75, 95) against Defendants, and under Rule 55 – (b)(1)(2), by having Clerk or by Order of the Court enter Default Judgment (ECF Nos, 28, 31, 77, 81, 88) against Defendants, according to his affidavit sum certain total of **\$22, 529,329.60**, for failing, abandoning or forfeiting, to file answer to Plaintiff’s Second and Third Amended Complaint(ECF Nos. 10, 36), or under rule 12, a valid motion or motion, **within the 21, or 28 days’ required time span** and or to appeal the District Court’s Orders and final Judgment(ECF Nos. 35, 56, 62, 67, 68). See, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

B. The Berrien County Defendants were Properly Served Summonses with copies of Complaints (ECF Nos, 10, 36), and failed to file answers or Rule 12 motions, Clearly, Plaintiff Warrants Defaults and Default Judgments Against Them.

i. Plaintiff's Newly Discovery of Attorney Hackworth Authorization by Appointment or by Law by Defendants Berrien County. Exhibit-W15

First, Plaintiff's new discovery that on December 21, 2021, Defendants Berrien County Board of Commissioners have Authorized by Appointment or by law Attorney Hackworth to receive service of process on behalf of the Berrien County Defendants'. see, (Exhibit-W15). Moreover, that the Berrien County Defendants have conceded, that Attorney Hackworth properly received from Plaintiff, service of process on behalf of the Berrien County Defendants under both state and federal laws: "...an agent authorized by appointment or by law to receive service of process" may receive service on behalf of either (1) a corporation, Fed. R. Civ. P. 4(h)(1)(B), or (2) an individual defendant, Fed. R. Civ. P. (e)(2)(C)." see (ECF No. 102, PageID.1299). And that, "While the Michigan rules do allow for service upon an agent, the rules still require that the agent be personally served. Mich. Ct. R. 2.105(I)(1) requires service of process to be made by "serving a summons and a copy of the complaint on an agent authorized by written appointment or by law to receive service of process." (ECF No. 102, PageID.1300).

As such, the only issue of disagreement among Plaintiff and Defendants is about Process and Manner of Service, that, Mich. Ct. R. 2.105 (A) (1) (2), made clear can be by either personal service or by mail. The Defendants' incorrect and moot legal analysis is Attorney Hackworth should only be served on behalf of the Berrien Defendants by personal service. And, Plaintiff's correct and legal analysis is that of the Service under District Court's Local Rules Service Handbook, and Mich. Ct. R. 2.105 (A) (1) (2), which gives both options to Plaintiff personal service or by mail, certified mail with restricted delivery and return receipt. see, (Exhibit-W14).

As such, Magistrate Judge's Order (ECF No. 91), must be reversed in part, Default and Default Judgment entered against Defendants (ECF Nos.28,32,75,77,81,95), per Rule 55: (a); (b)(1)or(2).

Second, notwithstanding Plaintiff's Verbal Agreement argument, the new discovery, further, proves Magistrate Judge's Order in part is moot, citing Mr. Hackworth, (ECF No. 91, PageID.1123), "Mr. Hackworth further states that, he told Plaintiff that he did not agree to waive or accept service on behalf of any Defendant. (Id. at PageID.303.)"; what Attorney Hackworth said were, "that he did not [agree to waive]or [accept service] on behalf of any Defendant"; he did not say, [he did not have, express or implicit authorized, to accept service] on behalf of any Defendant behalf. Now, their Brief went further and set forth the legal authorities that gave Attorney Hackworth the express or implicit authorizations to accept service on their behalf. Fed. R. Civ. P. 4(h)(1)(B); Fed. R. Civ. P. (e)(2)(C) and Mich. Ct. R. 2.105 (A) (1) (2); (I)(1). This new discovery further proves that the Order is "clearly erroneous", "contrary to law," and violated the sixth Circuit's Order(ECF No. 72. An example, the Appellate Court's Order (ECF No. 72) Plaintiff's Complaint is bidding on [both current and former] Governors and Employees that injured Plaintiff. But, both Defendants and the Order on appeal in violation, said Plaintiff's Complaint should only be bidding on [current] Governors and Employees that injured Plaintiff.

Third, Defendants via their Attorney, Mr. Hackworth call Plaintiff's actions in the proceedings a "continuing gamesmanship" (ECF No. 102, PageID.1302). Defendants' derogatory and untrue statement came in the context of this immediate sentence. "At the time Plaintiff mailed process to the Berrien County Corporate Counsel, this action was already pending dismissal for lack of subject-matter jurisdiction upon Magistrate Judge Berens' Report and Recommendation. (ECF No. 16)." Defendants' derogatory and untrue statement confirmed Plaintiff's arguments both in District and Appellate Courts, that: **#1**). Defendants did not file an

answer to Plaintiff's, Second and Third Amended Complaint (ECF Nos. 10, 36), because they knew Plaintiff had finally discovered their continuous, forgery, fraud, thievery to injure Plaintiff. #2). Defendants have been using Courts, inclusive of this District Court's R&R, Orders and Final Judgment, (ECF Nos. 16, 62, 67, 68), as defenses to cover up their misconducts for the last fourteen years of continuous forgery, fraud, thievery that caused Plaintiff to lose all his same real properties, his employment, his livelihood, suffered homelessness, ultimately contributed to the death of our son, great pain and suffering and emotional distress. #3). The Order, (ECF No. 91) must be reversed in part, as it has now become, one more of Defendants' gamesmanship defense covering up their continuous forgery, fraud, thievery to prolong Plaintiff's 14 years sufferings.

Lastly, in part, the Magistrate Judge Order must be reversed, all Defendants' failing, abandoning, or forfeiting, to file answer to Plaintiff's Second and Third Amended Complaint (ECF Nos. 10, 36), or rule 12 motion, within the 21 days' required time span and did not appeal this Court's Orders and Final Judgment (ECF Nos. 35, 56, 62, 67, 68); Clerk must be permitted to enter Default and Clerk or by Judge's Order to enter Default Judgment against Defendants, to be "consistent" with the Sixth Circuit's Order (ECF No.72) and the mentioned controlling laws.

C. The Niles Charter Township Defendants were Properly Served Summonses with copies of Complaints (ECF Nos, 10, 36), and failed to file an answer or a rule 12 motion or objection to Plaintiff's Third, Amended Complaint (ECF No. 36) and did not appeal District Court's Order and Final Judgment (ECF Nos 67, 68), Warrants Plaintiff's Default and Default Judgment Against Them. (ECF Nos 28, 32, 75, 77, 95).

First, Plaintiff properly served the Niles Township Defendants his Second and Third, Amended Complaint (ECF Nos.10, 36). The Magistrate Judge violated Plaintiff's due process rights, and violated her own Order, Granting Plaintiff fourteen days, after Defendants cure their Motion defect for extended time to respond to Plaintiff's Second Amended Complaint (ECF No.10). But as soon as the Niles Township Defendants cured their Motion defect on January 03,

2023, the Magistrate Judge Granted it in violation of Plaintiff's due process rights and violated her own Order giving Plaintiff Fourteen days to file his objection(ECF Nos.23, 25, 26, 27, 30³).

Second, they did not oppose the Third Amended Complaint (ECF Nos.36,37), they should either have filed an answer or rule 12 motion on or before January 28, 2023. **Third**, they did not appeal the District Court's Order and Final Judgment (ECF Nos 25, 27, 67, 68). **Fourth**, remand was on December 11, 2023, and they still did not file an answer or a rule 12 motion within the 21 days' time span. **Fifth**, the Niles Township Defendants did not oppose Plaintiff's Request for Clerk to enter Default(ECF Nos 32, 75, 95) and Clerk or Court to enter Default Judgment (ECF Nos 28, 77, 81) per Fed. R. Civ. P. 55 (a), (b)(1) (2), against them.

Lastly, as such the District Court must be "consistent" with Sixth Circuit's Order (ECF No. 72), by permitting Clerk to enter Default(ECF Nos 32, 75, 95) and Clerk or Court Default Judgment (ECF Nos 28, 77, 81) per Fed. R. Civ. P. 55 (a), (b)(1) (2). And, controlling laws: Fed. R. Civ. P. 1; (The doctrine of the law of the case); (The law of the case doctrine); Res Judicata and Collateral Estoppel; Fed. R. Civ. P. 12 (a)(2) (b)(1)(A).

D. The Question Plaintiff Seeks to be answered is, should an Officer of this District Court and His Professional Practice Entity, Attorney Jeffery R. Holmstrom and Holmstrom Law Office PLC, Defendants get away with their willful rejections of service by certified restricted mailing of Summonses and copies of Complaint (ECF No, 10), or if they received the same and pretended as if they did not get them?

The Record shows that, the Holmstrom Defendants rejected the certified mail with restricted delivery . Furthermore, while both Defendants, Niles Charter Township (ECF No. 29-1, PageID.115) and the State of Michigan, (**Exhibits W-11, 12, 13, 14**); went to the Postal

³ Moreover, Plaintiff's timely objection (ECF No. 30), was filed after the Magistrate Judge Orders(ECF Nos. 25, 27), granted Defendants' Motion(ECF No 23) and was before Sixth Circuit Appellate Court unopposed. As such Plaintiff warrant Default and Default Judgment (ECF Nos 28, 32 andn75, 77, 81, 95) against the Niles Township Defendants.

Facilities and Picked up their summonses and copies of Second Amended Complaint. The Holmstrom Defendants personal letter to the Court demonstrates that, they willfully failed to go to the Postal Facility to Pick up their summonses, and copies of Second Amended Complaint. ECF No. 29, PagesID.111-112). The Order(ECF No.91) must be reversed, in part, with Default and Default Judgment be entered against Holmstrom Defendants (ECF Nos.28,32,75,77,81,95).

E. The State of Michigan Defendants were Properly Served Summonses with copies of Complaints (ECF Nos, 10, 36), failed to file an answer or a valid Motion under Rule 12, or an Appeal, Warrant Plaintiff's Default and Default Judgment Against Them.

i. Plaintiff's New Discovery Defendants Pickup Summonses with copies of Complaint (ECF No, 10) at Postal Facility Exhibit W-12

The record shows that, Plaintiff properly served all State of Michigan Defendants under State Rules, Federal Rules Fed. R. Civ. P. 4(h)(1)(B); Fed. R. Civ. P. (e)(2)(C) and Mich. Ct. R. 2.105 (A) (1) (2); (I)(1); and per "District Court's Local Rules Service Handbook", ECF No. 49, PageID.311); (ECF No. 49-1, PageID.320), by "2. By Mail The summons and complaint can be served by sending them by certified mail with restricted delivery and return receipt. A "green card" (PS Form 3811) will be mailed to the plaintiff, to show proof of service. The "green card" or a copy, must be filed with the Court." (Exhibit W-12); (ECF No. 29, PagesID.104-112).

The newly discovered evidence that Attorney Nicholas Bagley's Office went to the Postal Facility, Picked up the Summonses and copies of the Second Amended Complaint on behalf of Former Governors, Snyder, and Granholm with an electric return receipt. Exhibit W-12. Plaintiff filed "green card" with the Court that, Attorney General Nessel received Summons and copy of Complaint on behalf of Assistant Attorney General Asbenson, warrants Plaintiff's Default and Default Judgment against them, because: **First, the basic rights of service of process is to satisfy due process, and the State of Michigan Defendants like all the other Defendants had due process**

or willfully rejected due process. One example of the State of Michigan Defendants exercising their due process right was their Rule 12 Motion (ECF No. 18). **Second**, they abandoned filing within the 21 days' time span, answer to Plaintiff's Second and Third Amended Complaint (ECF Nos. 10, 36). **Third**, Defendants abandoned Appealing the District Court's Final Judgment (ECF Nos. 56, 62, 67, 68), Ordered, their Rule 12 Motion moot⁴. **Fourth**, District Court must be "consistent" with Sixth Circuit's Order, by reversed Order(ECF No.91) in part, permit the Clerk to enter Default and permit or Order Default Judgment against them, per Rule 55:(a),(b)(1)or (2).

F. The Benton Harbor Defendant was Properly Served Summons with copies of Complaints (ECF Nos, 10, 36), and failed to file an answer or a Motion under Rule 12, or an Appeal, Warrant Plaintiff's Default and Default Judgment Against Them.

The Magistrate Judge and Plaintiff agrees that, the Benton Harbor Defendant is properly served under State Rules, Federal Rules and the "District Court's Service Handbook", ECF No. 49, PageID.311); (ECF No. 49-1, PageID.320). However, the Magistrate Judge Denied entering Default and Default Judgment against Defendant in violations of the Sixth Circuit Court's Order (ECF No. 72); and other controlling laws. Ten-plus months after Benton Harbor violated her Order, "...28 days after the Court's decision on the Report and Recommendation (ECF Nos. 16, 35).", to file its Answer to Plaintiff's, Second Amended Complaint (ECF No. 10); started from

⁴ Plaintiff contends, State of Michigan Defendants' Rule 12 Motion(ECF No.18), that the District Court Ordered Moot with Final Judgment (ECF Nos.67, 68), which they did not appeal, must be consider as if they had never filed the Rule 12 Motion in this proceeding. **Because Defendants' MOOT Rule 12 Motion (ECF No.18), cannot stop the entrance of Plaintiff's Default and Default Judgment against them.** Furthermore, they argued in Appellate Court, that, "An appellant abandons all issues not raised and argued in its initial brief on appeal." Moreover, is there failing to appeal their Moot Rule 12 Motion. See more on pages 4, 5 above, it is a part of their full Appellate arguments they used against Plaintiff in the Sixth Circuit Court, that must be applied to them now, that they abandoned or waived all rights. As such the District Court must be "consistent" with Sixth Circuit's Order (ECF No. 72), by permitting Clerk to enter Default(ECF Nos 32, 75, 95) and Clerk or Court Default Judgment (ECF Nos 28, 77, 81) per Fed. R. Civ. P. 55 (a), (b)(1) (2) against them. And, other controlling laws: Fed. R. Civ. P. 1; (The doctrine of the law of the case); (The law of the case doctrine); Res Judicata and Collateral Estoppel; Fed. R. Civ. P. 12 (a)(2) (b)(1)(A).

February 13, 2023, expired on March 13, 2023⁵; and forfeited its rights to file an answer to Plaintiff's, Second and Third Amended Complaint (ECF Nos. 10, 36), or Motion Under Rule 12.

Plaintiff served Summons and Second Amended Complaint (ECF Nos. 10, 15, 29,), Defendant – City of Benton Harbor City Manager, Mr. Ellis Mitchell and on December 14, 2022, and he had one of his senior employees, Ms. April Mc Coy to signed for the Summons and the Complaint on his behalf.

The Defendant City Benton Harbor 28 days had expired on March 13, 2023, and 21 days have passed since the remand on December 11, 2023, and they did not appeal the District Court's Orders and Final Judgment (ECF Nos. 35, 56, 62, 67, 68). These controlling laws are applicable: (The doctrine of the law of the case); (The law of the case doctrine); Res Judicata, Collateral Estoppel Doctrines; Fed. R. Civ. P. 12 (b)(1)(A); (a)(2) or (3); to Order Clerk of Court to enter Default (ECF Nos. 32, 75, 95), and Clerk or by Order of the Court to enter Default Judgment (ECF Nos. 28, 31, 77, 81, 88), against City Benton Harbor Defendant, per to Rule 55: (a); (b), (1) or (2), and to reversed Granted Motion (ECF No. 85), to become consistent with the Sixth Circuit Court's Order and Final Judgment (ECF Nos. 72, 73).

Lastly, Plaintiff filed requested entering Default (ECF No. 95), on December 28, 2023, Defendant did not file a timely objection. Plaintiff contends it is clear either Defendant and its Attorney do not respect Plaintiff or and Court or they expect the Court be their legal representative. Either way Plaintiff request that Default be entered against the Defendant.

⁵ The doctrine of the law of the case; The law of the case doctrine; and Res Judicata, Collateral Estoppel Doctrines, barred the District Court from granting City of Benton Harbor Defendant reconsideration after Sixth Circuit Appellate Court's and ten months later. And barred the District Court from denying Plaintiff's proper Default and Default Judgment against it and all the other Defendants, under Rule 55: (a); (b), (1) or (2).

VI. Conclusion and Relief Request

For reasons articulated herein, Magistrate Judge's Order (ECF No. 91) must be reversed in part by permitting or ordering Clerk of Court to enter Default (ECF Nos. 32, 75, 95) against all Defendants, and by Clerk of Court or by Order of the Court to enter Default Judgment (ECF Nos. 28, 31, 77, 81, 88), against all Defendants, pursuant to Rule 55: (a); (b), (1) or (2). To reverse Defendant's Granted Motion (ECF No. 85), and that the time to file an answer or a valid rule 12 motion has long expired for all Defendants and to award damages set forth in affidavit, **\$22, 529,329.60**. Exhibits W-6- 15. Finding that, all Defendants' failing, abandoning, or forfeiting, to file answer to Plaintiff's Second and Third Amended Complaint(ECF Nos. 10, 36), or under rule 12, a valid motion or motion, **within the 21 days' required time span** and did not appeal the District Court's Orders and Final Judgment(ECF Nos. 35, 56, 62, 67, 68); and that, Plaintiff's request is "consistent" with the Sixth Circuit Appellate Court's Order (ECF No. 72) and controlling laws.

Lastly, should the United States District Court Judge, the Hon. Robert J. Jonker affirm Magistrate Judge's Orders, please, fast track same for an Interlocutory Leave to Appeal to Federal Sixth Circuit Appellate Court.

Respectfully Submitted,

Dated: January 17, 2024,

\S/ Owen W. Barnaby
Owen W. Barnaby, In Pro Se.

CERTIFICATE OF SERVICE

The undersigned states that on the 17th day of January 2024, a duplicate original of Plaintiff's, EXPEDITED CONSIDERATION REQUESTED, Plaintiff's Brief, against all named Defendants filed with the Clerk using the ECF System, which will provide electric notice to the parties of record, and I have emailed and mailed by U.S. Postal Service the same to the non-ECP participants attorney above.

Respectfully Submitted,

Dated: January 17, 2024,

\S/ Owen W. Barnaby
Owen W. Barnaby, In Pro Se.

CERTIFICATE OF COMPLIANCE

Certificate of Compliance with Type-Volume Limit and Typeface Requirements

1. This brief complies with the type-volume limitation of Local Rule 7.3(b)(i) because, excluding the part of the document exempted by this rule, this brief contains 13 pages.

2. This document complies with the typeface requirements of Local Rule 7.3(b)(ii) because this document has been prepared in a proportionally spaced typeface using Word 2013 in 12-point Times New Roman.

Respectfully Submitted,

Dated: January 17, 2023,

\S/ Owen W. Barnaby
Owen W. Barnaby, In Pro Se.

**SUPPLEMENTAL DESIGNATION OF RELEVANT
DISTRICT COURT DOCUMENTS**

Plaintiff's Appellant, Owen W. Barnaby and In Pro Se, Litigant, hereby designate the following additional District Court documents as relevant to this matter.

Record Entry Number	Description of Entry	Page ID No. Range
2	SUMMONS Issued	
4	Order/Amend Complaint	
7	SUMMONS Issued	
10	Amend Complaint	
11	Order Transferring Case	
15 29	Impending Dismissal	ID.7-8
16	Report/Recommendation	ID.9-18
18	Motion for Dismissal	
28	Entrance for Default Judgment Per Rule 55: (b)(1) or (2)	ID.84-95
28-1	Default/Affidavit	ID.96- 98
28-2	Certificate/Concurrence	ID.99- 102
29	Served/Complaint/Summons	ID.103-129
31	Entrance for Default Judgment Per Rule 55: (b)(1) or (2)	D.157- 160

31-1	Default/Affidavit	ID.161- 163
32	Default Per Rule 55: (a)	ID.157- 160
32-1	Default/Affidavit	ID.161-163
23 25 27 30 33 35	Motions Opposition Orders	ID
36, 37	Amended or Leave Amend Complaint	ID.173- 265
38-46	Summons to be issued	ID.285-295
47	Order, Stopping Summons	ID.294
49/ 49-1	Opposition/Declaration	
51	Opposition to Dismissal	ID.326- 360
53	Joint Motion/Extent time	
56	Order/Motion/Extent time	ID.524
57	Appellant Objection to Report/Recommendation	ID.525-559
57-1	Forgery Documents	ID.560-563
57-2	Barnaby's Affidavit	ID. 564-569
57-3	Illusory Truth Research	ID.770-779
57-4	Dr Bulgin Expert Report	ID.580-588
57-5	Dr. Payne Expert Report	ID.589-607

57-6	Paid In Full Tax Receipt	ID.608-609
57-7	Appraised at \$12,000.00	ID.610-635
57-11	Witskowski's Perjuries/ Fraud in his Deposition	ID.646- 686
57-12	Witskowski's Deposition.	ID.687- 694
57-13	Witskowski's Deposition	ID.695- 708
57-14	Proof of UPL & Foreclosure	ID. 709-714
57-16	State's Judgment & Order	ID.717-723
57-17	Holmstrom's Forgey /filings	ID.724-726
57-18	Holmstrom's Forgey /filings	ID.727-729
57-19	Holmstrom's Forgey /filings	ID.730-734
57-23	Witskowski's False Affidavit	ID.756-758
62 & 64	Appeal of Order	ID.887-922
67	Order Approving R &R	ID.939-943
68	Final Judgment	ID.944
69	Notice of Appeal	ID.945
72	Sixth Circuit's Order	
73	Sixth Circuit's Judgment	
32, 75, 95	Entrance of Default	

	Per Rule 55: (a)	
76	Affidavit	

80/ 83	State of Michigan	
84	Clerk's Notice	
85/86	Benton Harbor	
87	Berrien County	
28, 31, 77, 81, 88	Entrance for Default Judgment Per Rule 55: (b)(1) or (2)	
90	Plaintiff's Opposition	
91/96	Order on Appeal	
92	Holmstrom Personal Letter to Judge	
93/94	Notice for Appeal	